PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (COMPOSITION OF TRIBUNAL) (AMENDMENT) ORDER 2018

Thursday 26 April 2018

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not later than

Monday 30 April 2018

The Committee consisted of the following Members:

Chair: MARK PRITCHARD

† Black, Mhairi *(Paisley and Renfrewshire South)* (SNP)
Coffey, Ann *(Stockport)* (Lab)
† Davies, Philip *(Shipley)* (Con)
Elliott, Julie *(Sunderland Central)* (Lab)
Evans, Chris *(Islwyn)* (Lab/Co-op)
† Frazer, Lucy *(Parliamentary Under-Secretary of State for Justice)*
† Garnier, Mark *(Wyre Forest)* (Con)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Hepburn, Mr Stephen *(Jarrow)* (Lab)
† Milling, Amanda *(Cannock Chase)* (Con)
† O'Brien, Neil *(Harborough)* (Con)
† Onasanya, Fiona *(Peterborough)* (Lab)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Shapps, Grant *(Welwyn Hatfield)* (Con)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Watling, Giles *(Clacton)* (Con)

Nehal Bradley-Depani, *Committee Clerk*

† attended the Committee

Ninth Delegated Legislation Committee

Thursday 26 April 2018

[Mark Pritchard *in the Chair*]

Draft First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018

11.30 am

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): I beg to move,

That the Committee has considered the draft First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018.

It is a pleasure to serve under your chairmanship, Mr Pritchard. This statutory instrument introduces flexibility to the membership of tribunal panels. The changes are supported by the senior judiciary and the current Senior President of Tribunals, Sir Ernest Ryder.

I will start by describing our tribunal system, which is an important part of the justice system. Tribunals were initially designed to be proportionate, user-friendly ways of determining disputes. The SI seeks to bring more flexibility into the system. At the moment, both judicial and lay members sit on various panels. The current statutory scheme provides that, in determining the composition of the panel, regard should be had for the previous arrangements, which means that many tribunal panels are based significantly on historical precedents.

The SI provides the Senior President of Tribunals with more flexibility in when and how panel members are used. Experts will be used when they are needed, not simply because they have always been used. The context of the SI is that we are reforming the courts and tribunals system, using technology to bring it up to date. The SI allows the Senior President of Tribunals to consider what composition might be needed as our reform programme develops.

Quite simply, the SI removes the requirement to consider historical composition, but it provides safeguards. It provides that the Senior President of Tribunals must have regard to the nature of the dispute and the means by which it is to be determined, and the need for tribunal members to have particular expertise, skills and knowledge. The Senior President of Tribunals will still have a statutory duty, when determining the composition of panels, to consider the need for panel members to be experts in the law, or the subject matter being heard, and to ensure that the hearing is fair and efficient.

The SI also provides for ministerial oversight, so the panel composition will be set by practice direction. That will bring the position of the first-tier and upper tribunals into alignment with the wider justice system, as the Senior President of Tribunals will need to consult the Lord Chancellor on any panel changes but will continue to make the final determination.

In conclusion, the SI does not change any composition; that remains for the Senior President of Tribunals to review and consider. Safeguards are in place to ensure that users are not adversely affected. Whenever the Senior President of Tribunals has previously sought to amend panel arrangements, he has done so in collaboration with senior members of the judiciary. On that basis, I commend the order to the House.

11.33 am

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Mr Pritchard. We will be seeking a Division on this order. This is my third Delegated Legislation Committee of the week, and I was very good in the previous two, because I did not speak and I did not seek any Divisions—perhaps I want to make up for that today.

Tribunals, which have existed for many years, perform a vital role in our judicial system. They were designed mostly to deal with decisions made by public authorities—Government, the civil service, local authorities and others—but from time to time they are used when it is people against other people, for example in employment tribunals or the Land Tribunal. The rationale has always been to make them user-friendly and less formal. Strict rules of evidence are often not applied, and common sense is an important part of the process.

Tribunals always have a legal chair, who can bring legal expertise, and they normally have either one or two lay members attached to them. Those lay members tend to include at least one person with expertise in the particular area, and there often used to be another person who knew about the area—they might not have been an expert, but they could bring what I would call common sense. I will illustrate what I am talking about, because sometimes the lay element in tribunals is overridden and its strength not appreciated.

The Employment Appeal Tribunal is a classic example. As we know, traditionally it had one legal chair, one member from the CBI and one person from the trade unions. The reason for that is obvious: when there are employment disputes, and issues arising in the workplace, both those who have dealt with the issue from the employer's perspective and those who have dealt with it from the employee's perspective are there. Quite often the issue is not just what the law is; the law is quite straightforward in most cases. It is a question of fact; what weight is given to certain facts, and to certain practices in different companies, organisations and workplaces.

People who are members of trade unions and people who are members of the CBI—employers, businesspeople and so on—will have different experiences. Three people make the determination together, which is important for the ordinary person. We have to remember that most people who go to tribunals are not legally represented. Often their interests are protected, and what they have to say is listened to. The lay aspect is so important, and having a panel that is composed of a greater number of people.

The Minister may say that the provision made by this order does not rule out the Senior President of Tribunals constituting a tribunal in the way he or she—it is a he at the moment—thinks is appropriate for the case. However, the way tribunals have been constituted historically, and the way they operate at the moment, is, in my opinion, and I think in that of many people who use them, the best, fairest and most just.

I do not say that because of anything I might have read in the newspapers, but because many barristers and solicitors try to get some advocacy experience when they are law students. Most of the time their legal experience and advocacy skills come from going to tribunals, because people do not have to be legally qualified to turn up. As a second-year student, before I started working full-time six years later, I went to many such tribunals, including ones on education, health and disability, criminal injuries compensation, immigration and employment. I have first-hand knowledge and experience of the importance of having more than one person, and sometimes three people, at a tribunal hearing. The existing system is right, and we believe that any dilution of it would not be right, appropriate or fair.

I know that some people say that the Senior President of Tribunals, when deciding whether to have one, two or three people, will look at the nature of the case. The truth is that in tribunals—I believe we have 11 first-tier tribunals and six upper tribunals in the United Kingdom, covering vast swathes of people's lives—often the litigant will not have made a reasonable case for appealing. Sometimes it is just a simple, "I'm appealing," because they do not know what grounds to put into it.

I have had constituents come to me who are appealing to tribunal. They have said, "I don't know how to write; I can't construct sentences." Some people cannot write and some people, even if they have basic literacy skills, are unable to compose a sentence or a proper coherent application for grounds to appeal. Often there will simply be one line saying, "I don't agree with this decision," and at the hearing we find out what has actually been going on and what the person is trying to say. At that point it is too late because the tribunal judge has looked at it and said, "There's not much here, so we don't need to have an expert," or, "We don't need to have this person in here." It looks straightforward, but it is not.

I could give hundreds of examples, but I will refer to one classic one from when I represented somebody on a voluntary basis in what used to be called the DSS—Department of Social Security—tribunals. There was a medical report from the GP. In those days there was a doctor, a lawyer and a person from a local authority, who was not a councillor or a political person, but someone on a list of the great and the good or who was active in the community. The claimant had fairly limited English and their understanding was fairly limited. I looked at the medical report and thought, "What does all this medical terminology mean?" I had to go through "Black's Medical Dictionary", talk to a few friends who were medical students and create a whole submission on the debilitating effects of the condition on the claimant. The judge and the doctor listened to me, but it was the lay member who said, "Ms Qureshi, you are so right. My aunt has exactly the same condition, and what you are describing happens to her as well."

I give that as an example of a case that is not straightforward on paper and why it is so important to have a second or third person present. That is one of the reasons why tribunals have been constituted in this way, because they reflect the realities on the ground. In this place sometimes we forget. I am sure that MPs whose constituents come to see them know that a lot of people have difficulty even constructing a sentence. The lay and expert elements are therefore as important as the judicial element. How previous tribunals were constituted is important, and we should not be derogating from that or watering it down.

11.43 am

Lucy Frazer: The hon. Lady makes some important and valuable points. The lay element is incredibly important in such tribunals, which play an important role. I will touch on three points by way of response. First, the lay element will not be overridden by the changes made by the SI. The Senior President of Tribunals has a statutory duty to consider whether there is a need for a lay member. If there is, that will be the result. He has a statutory duty to consider the nature of the dispute and whether members with particular knowledge are needed.

Secondly, it is already the case, following consultation, that in the Asylum and Immigration Tribunal deportation cases are not routinely operated with lay members, although they can be if the resident judge thinks that is appropriate. There have been no significant changes in that regard, so no significant results. The appeals allowed are unchanged as a result of that. There are not routinely three members and that system works well.

Thirdly, I too have some experience of appearing before tribunals. In those cases I have found that lay members play an important role, but the judges, who are legally trained, are very used to litigants appearing before them and to dealing with the matters before them.

The hon. Lady mentioned employment tribunals. I want to make it clear that employment tribunals do not fall within the remit of this SI. We believe that the order will ensure the right flexibility for our tribunals system.

11.45 am

Mhairi Black (Paisley and Renfrewshire South) (SNP): This is not really my patch; I am covering for somebody else today. I have two questions. First, does the Senior President of Tribunals already have to consult the Lord Chancellor, or is that being newly introduced? Secondly, the Ministry of Justice has already stated that a range of quantitative data will be collected following implementation of the order. It would be sensible to have an impact assessment in a year's time to see how the change is going. If the Minister could reassure us on that, I do not think we have much to complain about.

11.46 am

Lucy Frazer: On the first point, the Senior President of Tribunals does not currently have to consult the Lord Chancellor. This measure will bring the tribunals into line with all the other courts, where the Lord Chancellor is consulted on changes to the composition of panels. On the point about a review, I am confident that there will be an impact assessment.

Mhairi Black: If the Senior President of Tribunals does not have to go to the Lord Chancellor already, what is the logic in introducing the change just now? The impartiality of the Senior President of Tribunals might be called into question if he is suddenly having to justify things. Would the impact assessment be within a year's time, or is it two or three years away?

Lucy Frazer: The order will not affect impartiality. It follows the process already adopted in other senior courts and brings in ministerial involvement. The Senior President of Tribunals will have to consult the Lord Chancellor but will still have the final say. This measure just brings it in line with the wider legal system. On the timing of the impact assessment, it is one year.

Question put.

The Committee divided: Ayes 9, Noes 5.

Division No. 1]

AYES

Davies, Philip
Frazer, Lucy
Garnier, Mark
Heaton-Jones, Peter
Milling, Amanda
O'Brien, Neil
Shapps, rh Grant
Swayne, rh Sir Desmond
Watling, Giles

NOES

Black, Mhairi
Hepburn, Mr Stephen
Onasanya, Fiona
Qureshi, Yasmin
Russell-Moyle, Lloyd

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018.

11.50 am

Committee rose.